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Office Supreme Court U. S.
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JAMES H. McKENNEY.

IN THE

Supreme Court of the United States.

October Term 1888.

HARRISON H. BALLARD, Appellant,
vs.
ANSON SEARLS, Appellee.
} No. 144.

Brief for Appellee in Opposition to Motion to Reverse the Decree of the Court Below.

May it please the Court:

This motion is, to say the least, an anomalous one.

Counsel claiming to appear in behalf of appellant Ballard comes here, and, on an affidavit of Alva Worden (a co-defendant with Ballard below) which states that said Ballard is the owner of certain lands, he asks this court to reverse the decree of the lower court, which after full hearing decided (His Honor Justice Matthews of this court sitting) that said Ballard was not the owner of said lands; in other words, to decide on an affidavit merely that the lower court was wrong, although that court had the regularly-taken evidence of said Worden before it when it determined the case, as appears from the record brought here on appeal.

To so decide would be contrary to the practice of this court, to equity and to law.

PRACTICE.

As to this point it is scarcely necessary to say that it is not the practice to reverse decrees on affidavits that they are erroneous. Beyond that, however, the motion comes too late.

In order to determine it appellant must in effect add to the record the statements in his moving papers, and, under Rule 14, it is now too late. The reversal occurred March 28th, 1887; and, therefore, during that or the next term the motion should have been made to escape the charge of laches.

Opposing counsel may claim the mandate had not then been observed in the lower court; but his own laches is the reason. Why did he not move before October 3d, 1887? No reason appears. When he did move, why did he couple an improper claim with his request, which caused a delay until January 9th, 1888? Even excusing him so far, no reason appears for the laches since January, 1888, (see affidavit for appellee); and in the absence of any he must be held in fault. The time to hearing of the appeal is short. If it ought to be reversed, then will be the proper season to urge it.

EQUITY.

Equity and good conscience is appealed to by the counsel for the motion. Appellant having committed a fraud, been detected in it and defeated in the lower court, comes here and asks that he be relieved from the effects thereof for the sake of equity. To receive equity he should have done equity.

But would it be equity? No. As appears from the affidavit of Vermilya, these lands were sold to Watters and Nugent, strangers to the record. If the motion be granted their title will be declared bad. But they had a right to consider it good; there was a valid judgment

under execution upon which, the sale was made, no *supersedeas* bond had been given, indeed, so far as they or the world knew, no appeal had been taken, as appears from the record in this court; for only by an amendment made more than two years after the decree was granted was it shown that any appeal had been taken in that case (see Record of Worden *v.* Searls, No. 118, October Term, 1886). What, then, had they to examine? No *supersedeas* having invalidated the execution, all they needed to consider was whether the property was Worden's, for, if so, subsequent reversal of the judgment against him, if appeal should be taken, would not divest their title.

Woodcock v. Bennett, 1 *Cowen*, 711.

The ownership of Worden they did consider. The lower court in this cause had declared the property his. If, on the facts as they appear in the record on appeal, this Court shall think otherwise, then, with equity, it can reverse the decision; that is a risk that the purchasers assumed, but that is the only one, and that risk they are willing to abide. No other than that can they justly be called upon to meet, so that in equity this cause should be determined upon its record at a full hearing, and only upon that, and the motion should be denied.

And to whose benefit would a different decision inure but Wordens'. Did not Mr. Hunt vehemently declare *they* were in possession of the lands (affidavit of Vermilya)? and yet under cover of Ballard' sname this Court is asked *on motion* to reverse the decree declaring them Wordens'. (*See C.*)

Public policy, which may be called *equity at large*, is entirely opposed to such a decision. It would be to say to defeated parties, the law provides that to prevent a sale of your property you must give a *supersedeas* bond, but that is wholly unnecessary; simply call in your nephew,

deed him your property for what price you please, then appeal, and if you finally succeed we will come to your aid and declare that act, though fraudulent when done, has been purged of the fraud, and, in effect, that the sale, though to a *bona-fide* purchaser at the marshal's sale, stands for naught. Does this court wish to encourage fraud to that extent? Most certainly not. And whom would such a course injure most? Why, judgment debtors. Purchasers at judicial sales there would be, but they would bid but nominal sums, and in all cases where judgments were sustained, as the great majority are, the property would be gone and but a nominal sum paid on the judgment.

LAW.

Beyond and overshadowing all the reasons above urged for denying this motion, is the fact that it would be contrary to the law as laid down years ago and universally followed.

The decree in this cause says the conveyances of this land to Ballard were without consideration, made to defraud creditors, and Ballard is privy to the fraud. (Record, p. 105.) The opinion of his Honor Justice Matthews (Record, p. 91), that the conveyances to the defendant Ballard were made with the express design to prevent their property from being subjected by the complainant to the payment of the amount found due to him by the Master, and Ballard is a party to the fraud.

In Wood *v.* Jackson (8 Wendell, 31) one party claimed under a deed alleged to be void as against creditors by the other party, purchasers at a sheriff's sale under a judgment afterward reversed, and Chancellor Walworth, in the course of his opinion, says:

"If that deed was void as against creditors, the legal title passed under the sheriff's sale, and that title was not divested by the subsequent reversal of the judgment."

Just such a state of facts exists here. Deeds void as against creditors were executed. That is not denied, but appellant's counsel asks that because the first judgment was reversed this court shall declare those deeds were not void as against creditors, and that, too, on a motion.

As previously stated, nothing has occurred to show that the proofs presented to the lower court are not correct. That court decided Ballard's holding to be Wordens' holding. Now, let us see where Worden would have been left by a reversal of the original judgment.

As far back as the time of Lord Coke it was held that sales under executions issued upon money judgments should be sustained, even though the judgments were afterward reversed, the basis being that, though the judgment be reversed, the execution remains good, and that if *erroneous* judgments were given, and the sheriff, by force of a *fieri facias*, sell a term of the defendant, yet the term shall *not* be restored, though the judgment be afterwards reversed by writ of error.

Manning's Case, 8 Coke, 192; *id.*, 284; 2 Bac., 506.

Eyre *v.* Woodfine, Cro. Eliz., 278, declares: The sheriff sells the property by authority of law to levy the money, and if the judgment be reversed the party shall not be restored to the term, for *he lost it not by the judgment.*

The leading American authority—Woodcock *v.* Bennett, 1 Cowen, 734—holds that it is well settled that where a judgment is reversed for error, the sale under the execution shall not be avoided.

Wood *v.* Jackson, 18 Wend., 124.

Jackson *v.* Caldwell, 1 Cowen, 641.

Willard *v.* Real Estate, 461—

are to the same effect; so Wordens' title would have been divested by the sale. There was a creditor as to him. The existence of such a creditor defeats the deeds to Ballard.

The execution, so far as what was done, holds good; the judgment in the action in aid of that execution is that Ballard's title was fraudulent, and that declaration still holds good.

The case cited by opposing counsel, Barton *v.* Pettit, the only one he even urges to support his position. presents a very different state of facts. There was no fraud there; a bond was given; the judgment on the bond was in favor of the plaintiff in the first case. To have sustained the second judgment would have been to order payment to be made by the bondsman *to the plaintiff*, who meanwhile had been declared unentitled to any payment.

If the decree appealed from was one declaring Searls must yet be paid, then equity might be invoked to prevent that. But such is not the case. Searls has already been paid (partially at least), and Wordens may have a right of action against him to recover the amount—a greater amount than even that named in the warrantee deeds to Ballard. If he had bought the property, they might have had a right of action to recover it, but none of these suppositions are facts in this case, and therefore the authority cited does not apply.

The very strongest claim that could be made in behalf of Ballard is this: That the judgment of September 3d, 1883, was erroneous; therefore, it was no judgment, and there was no judgment-creditor, and Wordens had a perfect right to give away their property if they so desired.

But this, however it may be presented and urged by sophistry, is fallacious.

Just such a state of affairs is considered by Chancellor Walworth, and he declares: "If that deed was void against creditors, the legal title passed under the sheriff's sale"; or, restated, the holder of the judgment which was afterwards reversed *was a creditor while it stood.* That

granted, as it must be, and not a vestige of foundation for this motion remains.

While the judgment of Searls *v.* Worden stood, no bond to supercede it having been given, it was a complete judgment for all purposes, and there was a creditor, regardless of what happened thereafter. The deeds to Ballard were void as against creditors. None can gainsay that, even now, at least not on a motion. If they desire to do so when the appeal comes on to be heard, the facts will meet them there. The transfer was fraudulent when it occurred, and nothing can wipe out that fraud. Ballard was a party to it, and if he suffers for it (though he will not) he is entitled to no sympathy. When they were given, therefore, the deeds were void, and Ballard acquired no title. He has not acquired any since. The decision of the lower court was just when it was made. It is just still.

Subsequent reversal of the first case has not affected the character of the transactions which did take place. So the chancellor decided, and so we think must this court decide, for equity and law unite to so require.

Respectfully submitted,

A. G. N. VERMILYA,
Solicitor, and of Counsel for Appellee
for the purposes of this Motion.

IN THE

Supreme Court of the United States.

October Term 1888.

HARRISON H. BALLARD, Appellant,
vs.
ANSON SEARLS, Appellee.
} No. 144.

UNITED STATES OF AMERICA,
District of Columbia. } ss.

ALLEN G. N. VERMILYA, being duly sworn, deposes and says that he is of full age and resides in the city of New York, N. Y,; that he has carefully examined the certificates of sale given by the marshal to the purchasers at the sale made under the levy recited in the affidavit of Alva Worden, herein verified, October 4th, 1888, and that the same are in the following words, to wit:

"The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

STATE AND EASTERN DISTRICT OF MICHIGAN, } ss.

I, Salmon S. Matthews, Marshal of the United States for the Eastern District of Michigan, do hereby certify that by a writ *fieri facias* issued from said Circuit Court for the Eastern District of Michigan, and tested on the seventeenth day of September, A. D. 1883, by which I was commanded to make of the goods and chattels, and for want thereof, then of the lands and tenements of Alva Worden and John S. Worden, in my bailiwick, the sum of twenty-four thousand nine hundred and sixty dollars and thirty cents, which Anson Searls, complainant, lately in said Circuit Court recovered against the said Alva Worden and John S. Worden, defendants, for

his damages which he had sustained by reason of the infringement by the defendants of certain letters-patent of the United States, the property of said complainant, as by reference to said writ will more fully appear, and by virtue of said writ I did, on the eighteenth day of September, A. D. 1883, levy the same and have this day sold at public auction or vendue (after duly advertising the same according to the statute in such case made and provided) all the right, title, and interest of Alva Worden and John S. Worden in and to the following lands and tenements, the same being and lying in the city of Ypsilanti, county of Washtenaw, and State and Eastern District of Michigan, and described as follows, to wit: All of lot numbered one hundred and ninety-seven (197) in the original plat of the village (now city) of Ypsilanti; also all the right, title, and interest of Alva Worden, one of the defendants named in said writ, in and to the following described lands and tenements, the same being and lying in the city of Ypsilanti, county of Washtenaw, State and Eastern District of Michigan, and described as follows, to wit: Those certain pieces or parcels of land lying, situate, and being in the city of Ypsilanti, Washtenaw county, Michigan, and described as follows, to wit: Beginning at the southeast corner of lot numbered one hundred and sixteen (116) in said village (now city) of Ypsilanti, running thence west twenty-one (21) feet and 10 inches; thence north eighty-six (86) feet; thence east twenty-one (21) feet and 10 inches; thence south eighty-six feet to the place of beginning; also the north ten-fourteenths ($\frac{10}{14}$) of lot two hundred and seventeen in Hunter's addition to the village (now city) of Ypsilanti aforesaid. Also all the right, title, and interest of John S. Worden, one of the defendants named in said writ, of, in and to the following described lands and tenements, the same being and lying in the city of Ypsilanti, county of Washtenaw, and State and Eastern District of Michigan, and described as follows, to wit: Lot numbered one hundred and ninety-eight (198) according to the recorded plat of said city, which said above described property I offered for sale in separate parcels, and sold the same as follows, to wit: All the right, title, and interest of said Alva Worden and John S. Worden, in and to the fol-

lowing lands and tenements, the same being and lying in the city of Ypsilanti, county of Washtenaw, State and Eastern District of Michigan, and described as follows, to wit: All of lot numbered one hundred and ninety-seven (197) in the original plat of the village (now city) of Ypsilanti, to John Waters, of , for fifteen hundred dollars, all the right, title, and interest of Alva Worden, one of the defendants named in said writ, in and to the certain piece or parcel of land lying, situate, and being in the city of Ypsilanti, Washtenaw county, Michigan, described as follows, to wit: Beginning at the southeast corner of lot numbered one hundred and sixteen (116) in said village (now city) of Ypsilanti, running thence west twenty-one (21) feet and 10 inches; thence north eighty-six (86) feet; thence east twenty-one (21) feet and 10 inches; thence south eighty-six (86) feet to the place of beginning, to John Waters for eight thousand and four hundred dollars; the north ten-fourteenths ($\frac{10}{14}$) of lot two hundred and seventeen (217) in Hunter's addition to the village (now city) of Ypsilanti aforesaid, to John Waters for six hundred dollars. All the right, title, and interest of John S. Worden, one of the defendants named in said writ, of, in and to the following lands and tenements, the same being and lying in the city of Ypsilanti, county of Washtenaw, and State and Eastern District of Michigan, and described as follows, to wit: Lot numbered one hundred and ninety-eight (198) according to the recorded plat of said city to John Waters for five hundred dollars, he being the highest bidder, and those being the highest sums bid for said parcels of land at said sale.

And I do further certify that the said John Waters will be entitled to a deed of said lands, and the sale will become absolute at the expiration of fifteen months from the date of this certificate and the time of said sale, unless the same shall have been previously redeemed in the manner prescribed by the statute of Michigan.

Given under my hand this tenth day of December, A. D. 1884, at Detroit, in the State and Eastern District of Michigan.

S. S. MATTHEWS, *U. S. Marshal.*
By A. S. MATTHEWS, *Deputy.*

I hereby certify that the rate of interest borne by the

judgment upon which the execution was issued in this cause in seven per cent. (7 per cent.)

S. S. MATTHEWS, *U. S. M.*"

[Endorsed]: "Marshal's certificate: S. S. Matthews, U. S. Marshal, to John Watters."

"The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

STATE AND EASTERN DISTRICT OF MICHIGAN, } ss.

I, Salmon S. Matthews, Marshal of the United States for the Eastern District of Michigan, do hereby certify that by virtue of a writ of *fieri facias* issued from said Circuit Court for the Eastern District of Michigan, and tested on the seventeenth day of September, A. D. 1883, by which I was commanded to make of the goods and chattels, and, for want thereof, then of the lands and tenements of Alva Worden and John S. Worden, in my bailiwick, the sum of twenty-four thousand nine hundred and sixty dollars and thirty cents, which Anson Searls, complainant, lately in said Circuit Court, recovered againt the said Alva Worden and John S. Worden, defendants, for his damages which he had sustained by reason of the infringement by the defendants of certain letters-patent of the United States, the property of said complainant, as by reference to said writ will more fully appear, and, by virtue of said writ, I did, on the eighteenth day of September, A. D. 1883, levy the same and have this day sold at public auction or vendue (after duly advertising the same according to the statute in such case made and provided) all the right, title and interest of Alva Worden, one of the defendants named in said writ, of, in and to the following piece or parcel of land, the same being and lying in the city of Ypsilanti, county of Washtenaw, State and Eastern District of Michigan, and described as follows, to wit: Beginning in the south line of Congress street at a point five chains and twenty (20) links west of the southwest corner of Congress and River streets, running thence west six (6) rods;

thence south sixteen (16) rods and fifteen and one-half (15½) feet; thence west four (4) rods; thence south seven (7) rods and twelve (12) feet; thence east ten (10) rods; thence north twenty-four (24) rods and eleven (11) feet to the place of beginning. Also, all the right, title and interest of John S. Worden, one of the defendants named in said writ, of, in, and to the following piece or parcel of land, the same being and lying in the city of Ypslanti, county of Washtenaw, and State and Eastern District of Michigan, and described as follows, to wit: Beginning in the south line of Congress street at a point four (4) chains and twenty (20) links west of the southwest corner of Congress and River streets, running thence west four (4) rods; thence south twenty-four (24) rods and eleven (11) feet; thence east four (4) rods; thence north twenty-four (24) rods and eleven (11) feet to the place of beginning. Which said above described property I offered for sale in separate parcels and sold the same as follows, to wit: All the right, title and interest of Alva Worden of, in, and to the following piece or parcel of land, the same being and lying in the city of Ypsilanti, county of Washtenaw, State and Eastern District of Michigan, and described as follows, to wit: Beginning in the south line of Congress street at a point five (5) chains and twenty (20) links west of the southwest corner of Congress and River streets, running thence west six (6) rods; thence south sixteen (16) rods and fifteen and one-half (15½) feet; thence west four (4) rods; thence south seven rods and twelve (12) feet; thence east ten rods; thence north twenty-four (24) rods and eleven (11) feet to the place of beginning, to George H. Nugent, of ———, for fifteen hundred dollars. All the right, title and interest of John S. Worden, one of the defendants named in said writ, of, in, and to the following piece or parcel of land, the same being and lying in the city of Ypsilanti, county of Washtenaw, State and Eastern District of Michigan, and described as follows, to wit: Beginning in the south line of Congress street at a point four (4) chains and twenty (20) links west of the southwest corner of Congress and River streets running thence west four (4) rods; thence south twenty-four (24) rods and eleven (11) feet; thence east four (4) rods; thence north twenty-four rods and eleven (11) feet to the place of

beginning, to George H. Nugent for fifteen hundred dollars, he being the highest bidder, and those being the highest sums bid for said parcels of land at said sale.

And I do further certify that the said George H. Nugent will be entitled to a deed of said lands, and the sale will become absolute at the expiration of fifteen months from the date of this certificate and the time of said sale, unless the same shall have been previously redeemed in the manner prescribed by the statute of Michigan.

Given under my hand this tenth day of December, A. D. 1884, at Detroit, in the State and Eastern District of Michigan.

S. S. MATTHEWS, *U. S. Marshal.*
By A. S. MATTHEWS, *Deputy.*

I certify that the rate of interest borne by the judgment upon the execution in this cause was issued is seven per cent. (7 per cent.)

S. S. MATTHEWS, *U. S. M.*

[Endorsed]: "Marshal's Certificate: S. S. Matthews U. S. Marshal, to Geo. H. Nugent,"

And that deponent has compared the above with said original certificates and found it to be a correct copy of them, respectively, and of the whole of them.

Deponent further says that on the 3d day of October, 1887, Charles J. Hunt, solicitor and of counsel for appellant herein, made a motion before the United States Circuit Court for the Eastern District of Michigan, in the case of Searls *v.* Worden, to which suit reference is made in the moving papers herein; that one part of said motion made in behalf of the defendants therein was, that all proceedings in that case since the appeal therein be vacated and set aside; that in the brief presented by said Hunt upon said motion and signed by him, he declares: "*In the case before the court, the lands are in possession of the defendants;*" that the only defendants in that case were

Alva Worden and John S. Worden, and the only lands that could have been referred to are those mentioned in the moving papers herein; that said motion was denied January 9th, 1888, and no reason appears why the decree of this court in said case of Searls *v.* Worden should not have been made the decree of the lower court at once.

Sworn to before me this 24th day of November, 1888

A. G. N. VERMILYA.

Robert E Morris
Notary Public &c

Office Supreme Court U. S.
FILED.
OCT 25 1888
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1888.

No. 144.

HARRISON H. BALLARD,
Appellant,
vs.
ANSON SEARLS,

Now, comes the said appellant by Charles J. Hunt, his solicitor, and of counsel, in pursuance of leave heretofore granted, and, on reading and filing the affidavit of Alva Worden; the decree of this court in the case of Alva Worden and John S. Worden, appellants, vs. Anson Searls, appellee, duly certified; the mandate of this court to the Circuit Court of the United States for the Eastern District of Michigan, in the said cause of Alva Worden and John S. Worden, Appellants, vs. Anson Searls, appellee; the decree of the said Circuit Court dismissing the bill in the case of Anson Searls, vs. Alva Worden and John S. Worden, in pursuance of the said mandate of this court; the prayer for an appeal in the case of Anson Searls, vs. Harrison H. Ballard *et al.* the allowance of such appeal; the order extending the time to furnish bond; the order fixing the amount of the bond; the bond, and its approval by one of the judges of the said circuit court; the letters of the clerk of said circuit court transmitting the return to the appeal in the case of Anson Searls, vs. Harrison H. Ballard, *et al.;* the receipt of the clerk of this court for said return and the certificates of the clerk of the said circuit court to these papers.

Moves the court now here that the said decree of the said Circuit Court for the Eastern District of Michigan, in this cause wherein the said Anson Searls was complainant, and the said Harrison H. Ballard and others were defendants, so far as it affects the said Harrison H. Ballard, the appellant, be reversed and that the said cause may be remanded to the said Circuit Court for the Eastern District of Michigan, with a direction to dismiss the bill in said cause with costs.

CHARLES J. HUNT,
Solicitor and of Counsel for Appellant.

No. 118.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1886.

ALVA WORDEN AND JOHN S. WORDEN, APPELLANTS,

vs.

ANSON SEARLS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States, for the Eastern District of Michigan and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the final decree of the said Circuit Court, in this cause and the orders of March 6, 1882, and October 9, 1882, be, and the same are hereby, reversed with costs: And that this cause be and the same is hereby remanded to the said Circuit Court with a direction to dismiss the bill with costs, but without prejudice to the power and right of the Circuit Court to punish the contempt referred to in those orders by a proper proceeding. March 28, 1887.

That on the eighth day of August, A. D., 1887, this court issued its mandate to the said Circuit Court, in said cause, as follows, to wit:

UNITED STATES OF AMERICA, ss:

The President of the United States of America.

[SEAL.] To the Honorable the Judges of the Circuit Court of the United States, for the Eastern District of Michigan, Greeting.

Whereas, lately in the Circuit Court of the United States for the Eastern District of Michigan, before you or some of you, in a cause between Anson Searls, complainant, and Alva Worden and John S. Worden, defendants, wherein the order of the said Circuit Court, entered in said cause on the 6th day of March, A. D., 1882, is in the following words, viz:

The defendants having been duly served with the writ of injunction heretofore issued in this cause and with a copy of the order entered in said cause requiring said defendants to show cause why an attachment for contempt of this court for an alleged violation of said writ of injunction should not be issued against them, proof of service of which said in-

junction and of said order are now on file in said cause, and said defendants having appeared to answer said order, and on hearing Mr. Fitch, of counsel for complainant, in support of the application or petition for attachment, and Messrs. Sprague & Hunt, of counsel for defendants, in opposition thereto, and the affidavits produced by said counsel on said hearing: It is adjudged by this court that the said defendants are guilty of the contempt charged against them for a violation of the injunction issued in this cause, and that the said defendants, Alva Worden and John S. Worden, pay to said complainant, Anson Searls, the sum of two hundred and fifty dollars as a fine for said violation, together with costs of said proceedings, to be taxed, and that said defendants stand committed until the same be paid.

And wherein the order of the said Circuit Court, entered on the 9th day of October, A. D., 1882, is in the following words, viz:

The defendants having been duly served with the writ of injunction in this cause, and after a hearing, having been adjudged guilty of contempt in violating the same, and it having been referred to Henry M. Campbell, a Master of this court, to take proofs and ascertain, and report to the court the damages sustained by the complainant by reason of said violation of injunction, and said Master having made his report, and counsel for respective parties having been heard thereon, after mature deliberation, it is by the court now here ordered that said defendants, Alva Worden and John S. Worden, do pay a fine of eleven hundred and eighty two dollars, to the clerk of this court, to be paid over by said clerk to complainant for damages and costs, and that said defendants do stand committed until the same is paid.

And wherein the final decree of said Circuit Court is in the following words, viz:

This cause having been heretofore heard on the pleadings and proofs, and an interlocutory decree having been entered herein on the 6th day of February, 1882, whereby it was adjudged among other things, that, re-issued letters patent No. 5,400, dated May 6th, 1873, were valid; that the complainant herein was sole owner thereof, and that the defendants, Alva Worden and John S. Worden, had infringed the same, and whereby it was ordered that a perpetual injunction restraining the defendants from any further infringement should thereupon issue, and that it be referred to Henry M. Campbell, Esq., a Master of this Court, to take proofs in the case and state an account of all the moneys or profits made or received by the defendants, or either of them, from the sale of the infringing articles, and also the damages suffered by complainant by reason of such sale, the said master having rendered his report and the defendants having filed certain exceptions thereto; now, after hearing Messrs. Sprague & Hunt, counsel for defendants, in support of such exceptions, and J. P. Fitch, Esq., of counsel for complainant, in opposition thereto, the matter having been duly considered, it is ordered and decreed that the interlocutory decree entered herein on the 6th day of February, 1882, aforesaid, be, and the same hereby is, in all respects ratified and confirmed.

It is further ordered that the exceptions of the defendants to the master's report herein be and the same are hereby overruled, except in so

far as they relate to the refusal of the master to deduct from the profits as found by him the sum of $13,835.90, the amount of profit which might have been derived from the sale of ordinary tin tubular sockets, in respects to which said exceptions are sustained, and it is further ordered and decreed that the defendants, Alva Worden and John S. Worden, do forthwith pay unto the complainant, Anson Searles, the sum of twenty-four thousand five hundred and seventy three dollars and ninety-one cents.

And that the defendants pay forthwith to complainant the costs of this action as taxed by the clerk of this court, being the sum of $386.40.

And that the complainant have judgment against the defendants, Alva Worden and John S. Worden, for the sum of twenty-four thousand five hundred and seventy-three dollars and ninety-one cents, being the profits due from them severally and jointly, and the costs in this action, $386.40, amounting in all to the sum of $24,960.31, and that complainant have execution therefor.

As by the inspection of the transcript of record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeable to the Act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hnndred and eighty-six, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel; in consideration whereof, it is now here ordered, adjudged and decreed by this court that the final decree of the said Circuit Court, in this cause, and the orders of March 6, 1882, and October 9, 1882, be and the same are hereby reversed with costs; and that the said defendants recover against the said complainant, Anson Searls, seven hundred and seventy one dollars and twenty-five cents for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said Circuit Court with a direction to dismiss the bill with costs, but without prejudice to the power and right of the Circuit Court to punish the contempt referred to in those orders by a proper proceeding.

MARCH 28, 1887.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the eighth day of August in the year of our Lord one thousand eight hundred and eighty seven.

Costs of defendants.

Clerk	$293.25.
Attorney	20.00.
Printing Record	458 00.
	$771.25.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

And that the said mandate was filed in the said Circuit Court of the United States for the Eastern District of Michigan, in open court on the third day of October, 1887.

And that afterwards, to wit, on the third day of September, A. D., 1888, the following order was entered in said case in the said Circuit Court, to wit:

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment, at the District Court Room in the City of Detroit, on Monday the third day of September in the year one thousand eight hundred and eighty eight.

Present, the Honorable Henry B. Brown,

District Judge.

ANSON SEARLS,

vs.

ALVA WORDEN and

JOHN S. WORDEN.

IN EQUITY.

On reading the mandate of the Supreme Court of the United States made on appeal in the above cause, heretofore filed in this cause, on motion of Charles J. Hunt, of counsel for defendants, it is hereby ordered that the decree of the Supreme Court of the United States, which is as follows, to wit:

"This cause came on to be heard on the transcript of record from the Circuit Court of the United States for the Eastern District of Michigan, and it was argued by counsel.

In consideration whereof it is now here ordered, adjudged and decreed by this court, that the final decree of the said Circuit Court, in this cause, and the orders of March 6, 1882, and October 9, 1882, be, and the same are hereby reversed with costs; and that this cause be and the same is hereby remanded to the said Circuit Court with a direction to dismiss the bill with costs, but without prejudice to the power and right of the Circuit Court to punish the contempt referred to in those orders by a proper proceeding."

Be and the same is hereby made the decree of this court.

HENRY B. BROWN,

District Judge.

And this deponent further says: that, when the said final decree in the said cause of Anson Searls against Alva Worden and John S. Worden, was entered in the said Circuit Court of the United States for the Eastern District of Michigan.

The said defendants, Alva Worden and John S. Worden, were unable to give a bond which would operate as a supersedeas bnd and;

That afterwards, to wit, on the seventeenth day of September, A. D. 1883, the complainant in said suit caused an execution in said suit to issue out of and under the seal of the said Circuit Court of the United States for the eastern district of Michigan; directed to the marshal of the said district, commanding him to cause to be levied and made from the goods and chattels, and for want of them, from the lands and tenements of the said Alva Worden and John S. Worden, the sum of twenty-four thousand, nine hundred and sixty dollars and thirty cents, and to render the same to the said Anson Searls.

That the said marshal on the 18th day of September, 1883, under the said execution, levied upon certain lands and tenements belonging to Harrison H. Ballard, of the town Georgia, County of Franklin, and State of Vermont, to wit: All those pieces or parcels of land situate, lying and being in the city of Ypsilanti, county of Washtenaw and State of Michigan, to wit: All of lot numbered one hundred and ninty-seven (197), in the original plat of the village (now city) of Ypsilanti; and also on the following described piece or parcel of land, described as follows: to wit: Beginning at the southeast corner of lot numbered one hundred and sixteen (116) in said village (now city) of Ypsilanti, running thence west twenty-one (21) feet and ten (10) inches, thence north eighty-six (86) feet, thence east twenty-one (21) feet and ten (10) inches, thence south eighty-six (86) feet to the place of beginning. Also on the north ten-fourteenths (10-14) of lot numbered two hundred and seventeen (217) in Hunter's addition to the village (now city) of Ypsilanti: and also on lot numbered one hundred and ninety-eight (198) according to the recorded plat of said city.

And the said marshal on the 18th day of September, 1883, also levied the said execution on the following described lands and tenements belonging to the said Harrison H. Ballard, situate, lying and being in the township of Sumpter, county of Wayne, and State of Michigan, described as follows, to wit: The east half of the southeast quarter of section eleven (11), and the northwest quarter of said southeast quarter of said section eleven (11), and the west half of the southwest quarter of section twelve (12), town four (4) south of range eight (8) east; and also on the west half of the northwest quarter of section thirteen (13) and the southwest quarter of section thirteen (13) and the east half of the southwest quarter of section fourteen (14), town four (4) south of range eight (8) east.

That said marshal on the 18th day of September 1883, under said execution levied upon the following described pieces or parcels of land, to wit, all that piece or parcel of land laying and being in the city of Ypsilanti, county of Washtenaw, state and eastern district of Michigan, and described as follows, to wit: Beginning in the south line of Congress Street at a point of five (5) chains and twenty (20) links west of the southwest corner of Congress and River streets, running thence west six (6) rods, thence south sixteen (16) rods and fifteen and one half (15½) feet, thence west four (4) rods, thence south seven (7) rods and twelve (12) feet; thence east ten (10) rods, thence north twenty-four (24) rods and eleven (11) feet to place of beginning, as the property of Alva Worden, and also on all that piece or parcel of land, being and lying in

the city of Ypsilanti, county of Washtenaw, state and eastern district of Michigan, and described as follows, to wit: Beginning in the south line of Congress street at a point four (4) chains and twenty (20) links west of the southwest corner of Congress and River streets, running thence west four (4) rods, thence south twenty-four (24) rods and eleven (11) feet, thence east four (4) rods, thence north twenty-four (24) rods and eleven feet to the place of beginning, as the property of John S. Worden.

That the two last mentioned pieces or parcels of land were encumbered by several mortgages given by the said defendants, Alva Worden and John S. Worden to Mary A. Andrews, Henry M. Curtis, Henry Van Tuyl and Charles King to secure the payment of several sums of money owing from the said defendants, Alva Worden and John S. Worden to the said Mary A. Andrews, Henry M. Curtis, Henry VanTuyl and Charles King.

And that afterwerds, to wit: on the tenth day of October, A. D. 1883, the said complainant, Anson Searls, filed his bill of complaint in the above entitled cause against the said Alva Worden, John S. Worden, Mary A. Andrews, Henry M. Curtis, Henry VanTuyl, Charles King and Harrison H. Ballard, to set aside as fraudulent and void the conveyances by which the title to the following lands were vested in the said Harrison H. Ballard, to wit: All those certain pieces or parcels of land, situate, lying and being in the city of Ypsilanti, county of Washtenaw, and state of Michigan, known and described as lot numbered one hundred and ninety-seven (197) in the original plat of the village (now city) of Ypsilanti, together with all and singular the engine, boiler, power presses, iron lathes, planes, cutting machine, centering machine, power drills, emery wheels, portable forges, and all other fixtures pertaining or belonging to the machine shop or manufactory situate on the said premises. And also all that piece or parcel of land known and described as the north ten fourteenths (10-14) of lot numbered two hundred and seventeen (217) in Hunter's addition to the village (now city) of Ypsilanti; and also all that piece or parcel of land known and described as lot numbered one hundred and ninety-eight (198) according to the recorded plat of the said city of Ypsilanti; and also all that piece or parcel of land known and described as follows, to wit: Beginning at the southeast corner of lot numbered one hundred and sixteen (116) in said village (now city) of Ypsilanti, running thence west twenty-one (21) feet ten (10) inches, thence north eighty-six (86) feet, thence east twenty-one (21) feet ten inches, thence south eighty-six (86) feet to the place of beginning.

And also all those pieces or parcels of land situate, lying and being in the town of Sumpter, county of Wayne, and state of Michigan, known and described as follows, to wit: The east half of the southeast quarter of section eleven (11), and the northwest quarter of said southeast quarter of said section eleven (11), and the west half of the southwest quarter of section twelve (12), town four (4) south of range eight (8) east; and also on the west half of the northwest quarter of section thirteen (13) and the southwest quarter of section thirteen (13) and the east half of the

southwest quarter of section fourteen (14), town four (4) south of range eight (8) east.

And also to set aside the said mortgages given by the said Alva Worden and John S Worden to the said Mary A. Andrews, Henry M. Curtis, Henry VanTuyl and Charles King, on lands belonging to the said defendants, Alva Worden and John S Worden, situate, lying and being in the said city of Ypsilanti, county of Washtenaw, and state of Michigan.

In aid of his execution in the said cause of Anson Searles vs. Alva Worden and John S. Worden.

And that the said Alva Worden, John S. Worden, Mary A. Andrews, Henry M. Curtis, Henry VanTuyl, Charles King, and Harrison H. Ballard, defendants, filed their several and respective answers to said bill of complaint, denying the allegations of fraud in said bill on the part of the several defendants.

And that thereupon such proceedings were had that the said cause was brought to a final hearing, and a decree entered on the 24th day of November, A. D. 1884, in which it was decreed that the mortgages given by the said defendants, Alva Worden and John S Worden to the said defendants, Mary A. Andrews, Henry M Curtis, Henry VanTuyl, and Charles King, were good and valid liens upon the lands mentioned therein and that the several conveyances to Harrison H. Ballard were fraudulent and void as against the creditors of the said Alva Worden and John S. Worden.

And thereupon the said defendants in open court claimed their appeal to the Supreme Court of the United States, which was allowed.

And thereupon the court ordered that the said defendants should give to the complainant a bond in the amount of eight thousand five hundred dollars to pay all loss and damage the said complainant might suffer from the said appeal.

And that the said defendants within the ten days fixed by the court procured the said bond in the sum of eight thousand five hundred dollars, which said bond was duly approved by one of the judges of said court and filed in the office of the clerk thereof.

And that the said appeal has been perfected and the record in the last above-mentioned cause has been duly filed and docketed in the office of the clerk of the Supreme Court of the United States at Washington.

And now stands as No. 144 on the docket for the October term 1888.

ALVA WORDEN.

Sworn and subscribed to before me this 4th day of October, 1888.

{S. L.}

HERSCHEL WHITAKER,
Notary Public, Wayne Co., Mich.

No. 118.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1886.

ALVA WORDEN AND JOHN S. WORDEN, APPELLANTS,

vs.

ANSON SEARLS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the final decree of the said Circuit Court, in this cause, and the orders of March 6, 1882, and October 9, 1882, be, and the same are hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the said Circuit Court with a direction to dismiss the bill with costs, but without prejudice to the power and right of the Circuit Court to punish the contempt referred to in those orders by a proper proceeding. March 28, 1887.

SUPREME COURT OF THE UNITED STATES.

I, James H. McKenney, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing is a true copy of the decree of the said Supreme Court in the case of Alva Worden and John S. Worden, Appellants, vs. Anson Seals, No. 118, October Term, 1886, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Washington, this 18th day of August, A. D., 1888.

[L. S.]

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA, ss.
The President of the United States of America.

[SEAL.] To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Michigan.

GREETING:

Whereas, lately in the Circuit Court of the United States for the Eastern District of Michigan, before you or some of you, in a cause between Anson Searls, complainant, and Alva Worden and John S. Worden, defendants, wherein the order of the said Circuit Court, entered in said cause on the 6th day of March, A. D., 1882, is in the following words, viz:

The defendants having been duly served with the writ of injunction heretofore issued in this cause and with a copy of the order entered in said cause requiring said defendants to show cause why an attachment for contempt of this court for an alleged violation of said writ of injunction should not be issued against them, proof of service of which said injunction and of said order are now on file in said cause, and said defendants having appeared to answer said order, and on hearing Mr. Fitch, of counsel for complainant, in support of the application or petition for attachment, and Messrs. Sprague & Hunt, of counsel for defendants, in opposition thereto, and the affidavits produced by said counsel on said hearing: It is adjudged by this court that the said defendants are guilty of the contempt charged against them for a violation of the injunction issued in this cause and that the said defendants, Alva Worden and John S. Worden, pay to said complainant, Anson Searls, the sum of two hundred and fifty dollars as a fine for said violation, together with costs of said proceedings, to be taxed, and that said defendants stand committed until the same be paid.

And wherein the order of the said Circuit Court, entered on the 9th day of October, A. D., 1882, is in the following words, viz:

The defendants having been duly served with the writ of injunction in this cause, and after a hearing, having been adjudged guilty of contempt in violating the same, and it having been referred to Henry M. Campbell, a Master of this court, to take proofs and ascertain, and report to the court the damages sustained by the complainant by reason of said violation of injunction, and said Master having made his report, and counsel for respective parties having been heard thereon, after mature deliberation, it is by the court now here ordered that said defendants, Alva Worden and John S. Worden, do pay a fine of eleven hundred and eighty two dollars, to the clerk of this court, to be paid over by said clerk to complainant for damages and costs, and that said defendants do stand committed until the same is paid.

And wherein the final decree of said Circuit Court is in the following words, viz:

This cause having been heretofore heard on the pleadings and proofs, and an interlocutory decree having been entered herein on the 6th day of February, 1882, whereby it was adjudged among other things, that, re-issued letters patent No. 5,400, dated May 6th, 1873, were valid;

that the complainant herein was sole owner thereof, and that the defendants, Alva Worden and John S. Worden, had infringed the same, and whereby it was ordered that a perpetual injunction restraining the defendants from any further infringement should thereupon issue, and that it be referred to Henry M. Campbell, Esq., a Master of this Court, to take proofs in the case and state an account of all the moneys or profits made or received by the defendants, or either of them, from the sale of the infringing articles, and also the damages suffered by complainant by reason of such sale, the said master having rendered his report and the defendants having filed certain exceptions thereto; now, after hearing Messrs. Sprague & Hunt, counsel for defendants, in support of such exceptions, and J. P. Fitch, Esq., of counsel for complainant, in opposition thereto, the matter having been duly considered, it is ordered and decreed that the interlocutory decree entered herein on the 6th day of February, 1882, aforesaid, be, and the same hereby is, in all respects ratified and confirmed.

It is further ordered that the exceptions of the defendants to the master's report herein be and the same are hereby overruled, except in so far as they relate to the refusal of the master to deduct from the profits as found by him the sum of $13,835.90, the amount of profit which might have been derived from the sale of ordinary tin tubular sockets, in respects to which said exceptions are sustained, and it is further ordered and decreed that the defendants, Alva Worden and John S. Worden, do forthwith pay unto the complainant, Anson Searles, the sum of twenty-four thousand five hundred and seventy three dollars and ninety-one cents $24,573.91.

And that the defendants pay forthwith to complainant the costs of this action as taxed by the clerk of this court, being the sum of $386.40.

And that the complainant have judgment against the defendants, Alva Worden and John S. Worden, for the sum of twenty-four thousand five hundred and seventy-three dollars and ninety-one cents, being the profits due from them severally and jointly, and the costs in this action, $386.40, amounting in all to the sum of $24,960.31, and that complainant have execution therefor.

As by the inspection of the transcript of record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeable to the Act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hnndred and eighty-six, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel; on consideration whereof, it is now here ordered, adjudged and decreed by this court that the final decree of the said Circuit Court, in this cause, and the orders of March 6, 1882, and October 9, 1882, be and the same are hereby reversed with costs; and that the said defendants recover against the said complainant, Anson Searls, seven hundred and seventy-one dollars and twenty-five cents for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said Circuit Court with a direction to dismiss the bill

with costs, but without prejudice to the power and right of the Circuit Court to punish the contempt referred to in those orders by a proper proceeding.

MARCH 28, 1887.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the eighth day of August in the year of our Lord one thousand eight hundred and eighty seven.

Costs of defendants.

Clerk	$293.25.
Attorney	20.00.
Printing Record	458 00.
	$771.25.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

Endorsed: 2662. Supreme court of the United States No. 118 October term, 1886. Worden *vs.* Searls. Mandate. Filed in open court. October 3rd, 1887. Walter S Harsha, clerk.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment, at the District Court Room in the City of Detroit, on Monday the third day of September in the year one thousand eight hundred and eighty eight.

Present, the Honorable Henry B. Brown,

District Judge.

ANSON SEARLS,

vs.

ALVA WORDEN and

JOHN S. WORDEN.

IN EQUITY.

On reading the mandate of the Supreme Court of the United States made on appeal in the above cause, heretofore filed in this cause, on motion of Charles J. Hunt, of counsel for defendants, it is hereby ordered that the decree of the Supreme Court of the United States, which is as follows, to wit:

"This cause came on to be heard on the transcript of record from the Circuit Court of the United States for the Eastern District of Michigan, and it was argued by counsel.

On consideration whereof it is now here ordered, adjudged and decreed by this court, that the final decree of the said Circuit Court, in this

cause, and the orders of March 6, 1882, and October 9, 1882, be, and the same are hereby reversed with costs; and that this cause be and the same is hereby remanded to the said Circuit Court with a direction to dismiss the bill with costs, but without prejudice to the power and right of the Circuit Court to punish the contempt referred to in those orders by a proper proceeding."

Be and the same is hereby made the decree of this court.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment, at the District Court Room in the City of Detroit, on Monday the twenty-fourth day of November in the year one thousand eight hundred and eighty-four.

Present, the Honorable Henry B. Brown,

District Judge.

ANSON SEARLS,

vs.

ALVA WORDEN, JOHN S. WORDEN, HARRISON H. BALLARD, MARY A. ANDREWS, HENRY M. CURTIS, HENRY VANTUYL and CHARLES KING.

2873.

In Equity.

Now, come the said defendants by Alfred E. Hawes, of counsel, and claim an appeal to the Supreme Court of the United States, from the decree heretofore entered in this cause and thereupon said claim of appeal is allowed by the court, amount of bond on appeal to fixed hereafter.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment, at the District Court Room in the City of Detroit, on Monday the first day of December in the year one thousand eight hundred and eighty-four.

Present, the Honorable Henry B. Brown,

District Judge.

ANSON SEARLS,

vs.

ALVA WORDEN ET AL.

2873.

In Equity.

In this cause the hearing of motion to fix amount of appeal bond is postponed until Wednesday next, and the time to file said appeal bond is extended accordingly.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment, at the District Court Room in the City of Detroit, on Wednesday the third day of December in the year one thousand eight hundred and eighty-four,

Present, The Honorable Henry B. Brown,

District Judge.

ANSON SEARLS,

vs.

ALVA WORDEN ET AL.

No. 2873.

In Equity.

In this cause after hearing counsel for respective parties, it is ordered that the amount of bond on appeal to the Supreme Court be and the same is hereby fixed at the sum of $8,500.00

Know all men by these presents, that we, Lambert A. Barnes, Watson Snyder, Henry P. Glover, James McChitister, Tubal C. Owen, Charles E. Samson Phil. C. Sherwood, Jonas L. Rappelye, George Thompson, Nelson M. Thompson and Henry VanTuyl all of the city of Ypsilanti, Mich., are held and firmly bound unto Anson Searls in the sum of eight thousand five hundred Dollars (8,500) lawful money of the United States of America, to be paid to the said Anson Searles, or to his certain attorney, heirs, executors, administrators or assigns to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators and each and every of them firmly by these presents.

Sealed with our seals, dated this eight day of December, one thousand eight hundred and eighty-four.

[SEAL.]

Whereas, lately at a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held at the Court Room in the City of Detroit, on the twenty-fifth day of November in the year one thousand eight hundred and eighty four, in a suit depending in said court between Anson Searls, complainant and Harrison H. Ballard, Alva Worden, John S. Worden, Mary A. Andrews, Henry M. Curtis, Henry VanTuyl and Charles King defendant, a decree was rendered against the said defendants Harrison H. Ballard, Alva Worden and John S. Worden, and the said Harrison H. Ballard having claimed an appeal to reverse the said decree in the aforesaid suit, in open court,

and the same having been allowed. Now the condition of the above obligation is such, that if the said Harrison H. Ballard shall prosecute his said appeal to effect and answer all damages and costs, recovered for the use and detention of the property and the costs of the suit and just damages for delay and costs and interest on the appeal then the above obligations to be void, otherwise to remain in full force and virtue.

Lambert A. Barnes,	L. S.	Philo C. Sherwood,	L. S.
Watson Snyder,	L. S.	Jonas L Rapplye,	L. S.
Tubal C. Owen,	L S.	George Thompson,	L. S.
Henry P. Glover,	L. S.	Henry Van Tuyl,	L. S.
James McChidister,	L. S.	Nelson M. Thompson,	L. S.
Chas. E. Samson,	L. S.		

STATE OF MICHIGAN, }
COUNTY OF WASHTENAW. } ss.

Nelson M. Thompson, Lambert A. Barnes, Watson Snyder, Tubal C. Owen, Henry P. Glover, James McChidister, Charles E. Samsom, Philo C. Sherwood, Jonas L. Rapplye, George Thompson and Henry Van Tuyl, being duly sworn say, and each for himself, say that they are each individually worth the sum of two thousand dollars over and above all debts and legal exemptions.

Nelson M. Thompson,	L. S.	Jonas L. Rapplye,	L. S.
Watson Snyder,	L. S.	George Thompson,	L. S.
Tubal C. Owen	L. S.	Lambert A. Barnes,	L. S.
James McChidister,	L. S.	Henry P. Glover,	L. S.
Chas. E. Samson,	L. S.	Henry Van Tuyl,	L. S.
Philo C. Sherwood,	L. S.		

Subscribed to before me this 8th day of December, 1884.

D. C. GRIFFIN,

[SEAL.] *Notary Public.*

Approved,

H. B. BROWN,

District Judge.

Filed Dec. 9th, 1884,

WALTER S. HARSHA,

Clerk.

UNITED STATES OF AMERICA, }
Eastern District of Michigan. } ss.

I, Walter S. Harsha, Clerk of the Circuit Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing are true and correct copies of following papers and orders on record in said cause, to wit:

1. An order allowing claim of appeal dated Nov. 24th, 1884.
2. Postponement of time for hearing motion to fix bond on appeal (W. S. H.)
2. An order fixing amount of bond on appeal at the sum of $8,500 and dated Dec. 3rd, 1884.
3. Bond on appeal to the Supreme Court, dated Dec. 8th, 1884.
4. Mandate of Supreme Court, dated Aug. 8th, 1887.
5. Order issued on mandate, dated Sept. 3rd, 1888.

That I have compared the same with the original entries of said orders and mandate and they are true transcripts therefrom and of the whole thereof.

[L. S.]

Witness my official signature and the seal of said court at Detroit in said district this twenty-sixth day of September in the year of our lord one thousand eight hundred and eighty eight and of the Independence of the United States of America the one hundred and thirteenth.

WALTER S. HARSHA, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

W. S. Harsha, Esq., Washington, Oct. 12th, 1885.

Clerk U. S. Circuit Court, Detroit, Mich.

Dear Sir:

Yours of the 8th inst enclosing appearance of Sprague & Hunt for the appellants and draft for $25 on account of deposit in case of Worden et al. vs. Searls, also transcript of record in said case, duly received.

As I have no means of knowing from the appearance, whether either Messrs. Sprague or Hunt are members of the bar of this court I return the same. Please have them sign as individuals and not as a firm, if both have been admitted, if not, have which ever one has been admitted, sign and return same.

Yours truly,

JAMES H. McKENNEY,

Dictated. Per H. C. M.

October 8, 1885.

James H. McKenney, Esq.,

Clerk of U. S. Supreme Court, Washington, D. C.

Dear Sir: I send by American Express Co. to-day my return to the claim of appeal, Anson Searls vs. Alva Worden, John S. Worden and Harrison H. Ballard, appellants. Herewith enclosed praecipe for appearance of Sprague & Hunt for appellants and N. Y. draft 74,712 for $25 advance required by you. Please acknowledge receipt. Has Mr. Maher been interviewed yet with reference to sending me a docket?

Very truly yours,

WALTER S. HARSHA, *Clerk.*

UNITED STATES OF AMERICA, } ss.
Eastern District of Michigan. }

I, Walter S. Harsha, Clerk of the Circuit Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of the material correspondence which passed between myself and the clerk of the Supreme Court at the time of the sending up of the record in the case of Searls vs. Worden, that I have compared the same with the original letter of the Supreme Court clerk and with the letter-press copy of my own and it is a true transcript therefrom and of the whole thereof.

[L. S.]

Witness my official signature and the seal of said court at Detroit in said district this first day of October in the year of our lord one thousand eight hundred and eighty eight and of the Independence of the United States of America the one hundred and thirteenth.

WALTER S. HARSHA, *Clerk.*

No. 144.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1888.

HARRISON H. BALLARD,
Appellant,

vs.

ANSON SEARLS,
Appellee.

Brief for Appellant on Motion to reverse the Decree of th Court below, etc.

May it please your Honors:

This is a motion to reverse the decree of the Circuit Court of the United States for the Eastern District of Michigan, entered in a certain cause, wherein Anson Searls was complainant and Harrison H. Ballard and others were defendants, and appealed to this Court by the defendant, Harrison H. Ballard, and is No. 144 on the docket for the October term, 1888.

The motion is founded upon the decree of this Court in the case of Alvah Worden and John S. Worden, Appellants, vs. Anson Searls, No. 118, October term, 1886, entered the 28th day of March, 1887; the mandate of this Court to the Circuit Court of the United States, to reverse the decree of said Circuit Court and to dismiss the bill, etc., and the decree of the said Circuit Court, in pursuance of said mandate dismissing the bill with costs, etc.; and the affidavit of Alva Worden, one of the defendants in the original suit.

The facts in the case are as follows:

On the 12th day of July, 1880, Anson Searls, the appellee in this cause, filed in the Circuit Court of the United States for the Eastern District of Michigan, his bill of complaint against Alva Worden and John S. Worden for the infringement of a patent, and such proceedings were had in the cause, that on the 5th day of September, 1883, a decree was entered in said cause in said Circuit Court, whereby it was decreed that the said Alva Worden and John S. Worden infringed the patent, and should pay over to the said Anson Searls $24,960.31.

That upon the entry of said decree the defendants appealed the case to this court. But the defendants, Alva Worden and John S. Worden were unable to give the necessary bond to operate as a supersedeas bond, upon said appeal.

On the 17th of September, 1883, the complainant issued an execution on his decree, and placed it in the hands of the marshall of said district.

On the 18th of September, 1883, the marshal under the execution levied upon certain lots in the city of Ypsilanti, County of Washtenaw, and upon certain lands in the town of Sumpter, connty of Wayne, all in the State of Michigan, in the eastern district thereof, the property of the said appellant, Harrison H. Ballard; and on other lands in the said city of Ypsilanti, belonging to the said Alva Worden and John S. Worden, but which were mortgaged to Mary Ann Andrews, Henry M. Curtis, Henry VanTuyl and Charles King.

That, on the 10th day of October, 1883, the said Anson Searls, in aid of his execution against the Wordens, filed in the said Circuit Court of the United States for the Eastern District of Michigan, his bill of complaint against Harrison H. Ballard, Mary A. Andrews, Henry M. Curtis, Henry VanTuyl, Charles King, Alva Worden and John S. Worden, to set aside as fraudulent and void as to the creditors of the said Alva Worden, and John S. Worden, the conveyances under which the said Harrison H. Ballard held the lands so levied upon; and also the mortgages given by the said Alva Worden and John S. Worden, on the said lands belonging to them to the said Mary Ann Andrews, Henry M. Curtis, Henry Van Tuyl and Charles King. That such proceedings were had in said last mentioned cause; that the cause was brought to a final hearing, and a decree entered on the 24th day of November, A. D. 1884, in which it was decreed that the mortgages given by the said defendants, Alva Worden and John S. Worden to the said defendants, Mary A. Andrews, Henry M. Curtis, Henry VanTuyl and Charles King, were good and valid liens upon the lands mentioned therein and that the several conveyances to Harrison H. Ballard were fraudulent and void as against the creditors of the said Alva Worden and John S. Worden.

Thereupon the said defendant Harrison H. Ballard prayed on appeal to the Supreme Court of the United States to reverse the said decree, as far as it related to him.

That the said appeal was allowed and the amount of the appeal bond was fixed at the sum of $8,500. That the said bond was duly executed and approved by one of the Judges of the said circuit court, and filed in tne office of the clerk of said circuit court. That on the 8th day of October, 1885, the clerk of the said Circuit Court of the United States for the Eastern District of Michigan, transmitted the transcript of the record in the case of Anson Searls, vs. Harrison H. Ballard *et al* to the clerk of the Supreme Court of the United States and that the said transcript was filed in the office of the clerk of this court on the 13th day October, 1885, and now stands on the docket for the October term 1888 as No. 144.

That since the appeal in this case, the appeal in the original case of Alva Worden and John S. Worden, appellants vs. Anson Searls, has been heard in this court, and a decree entered thereon on the 27th of March, 1887, wherein and whereby it was among other things ordered, adjudged and decreed that the final decree of the said circuit court in this cause, be and the same is hereby reversed with costs, and that the same be remanded to the said circuit court with a direction to dismiss the bill with costs.

That on the 8th day of August, 1887, this court issued its mandate in the said case of Alva Worden *et al.* appellants vs. Anson Searls, to the said circuit in which among other things the said Circuit Court of the United States for the Eastern district of Michigan, was directed to dismiss the bill with costs.

That said mandate was filed in the said circuit court on the 3rd day of October, 1887.

That on the third day of September, 1888, a decree was entered in pursuance of said mandate in the case of Anson Searls, vs. Alva Worden and John S. Worden, (the original case), dismissing the bill of complaint with costs.

POINTS.

1. As to the power of this court to grant the motion.

Relief, either in a suit in equity, or an action at law may properly be given in some cases, in a summary way by motion merely supported by affidavits.

Krippendorfer *v.* Hyde, 110 U. S. 276. (287) Chamberlain *v.* Cleveland, 1 Black 419. (425) Lord *v.* Veazie, 8 How. 251. (254) Wood Paper Co. *v.* Heft. 8 Wall. 333. (336, 337) County of Dakota *v.* Glidden, 113 U. S. 222.

In the case of United States *vs.* Morillo, 1. Wall. 706. (710) it is implied that upon proper evidence *de hors* the record, the court could proceed and adjudicate on the rights of the appellee.

2. As to the evidence to support the motion.

This must necessarily be *de hors* the record because the facts on which the motion is founded have occurred since the appeal in this case was granted.

This court is compelled as all courts are, to receive evidence *de hors* the record, affecting their proceedings in a case before them.

County of Dakota *v.* Glidden, 113, U. S. 222, (223, 225) and cases there cited.

3. The suit being auxilliary to another, the dismissal of the bill in the original suit, extinguishes the complainants right to the relief prayed for in this suit, and the decree of the court below should be reversed and the bill dismissed in this court where the cause is pending.

Barton *v.* Petit & Bayard, 7 Cranch, 288.

May it please your Honors.

I am aware that this is an unusual motion, but the case is peculiar and unusual. I do not know of any case in this court, except the case of Barton *vs.* Petit & Bayard, above cited, where the right to relief has been extinguished after the case was appealed, as it has been in this case.

In the case of Barton *vs.* Petit *et al.* at the hearing and for the purpose of making the record complete, a special certiorari was issued to bring up a part of the other case, which was *de hors* the record, to wit,

the execution, in order to show the connection of the two cases. Upon the return to the certiorari, the judgment in the auxilliary case was reversed in this court.

In the case now before the court, the bill filed in the court below, sets out the whole case of the original case of Searls *vs.* Alva Worden and John S. Worden; and that an execution had been issued and had been levied upon certain lands, &c.; and that the lands were the property of the Wordens, but had been fraudulently conveyed or mortgaged to the other defendants; and prayed that these conveyances should be set aside in order that he might have the benefit of his execution and levy. Thus the relation of the two suits is shown by the bill.

In support of this motion Mr. Alva Worden has made an affidavit, setting forth the proceedings and decree in the original case; the appeal and the issue of the execution, the levy, by the marshal, under the execution; the filing of the bill in aid of the execution, in the suit now before the court; the judgment of this court in the original case of Alva Worden and John S. Worden, appellants, *vs.* Anson Searls, reversing the decree of the court below, and dismissing the bill; the mandate of this court to the court below; the decree of the court below in pursuance of the mandate, dismissing the bill; the proceedings in the court below in this case, the decree, adjudging the conveyances to Ballard void and Ballard's appeal to this court.

The certified copies of the orders and decrees of this court and of the Circuit Court of the United States for the Eastern District of Michigan, show, that, this court on appeal reversed the decree of the court below in the case of Alva Worden and John S. Worden, appellants, *vs.* Anson Searls, and directed the bill to be dismissed; that on such decree in this court a mandate was issued to the court below to dismiss the bill; that the mandate was filed in said court and that in pursuance thereof the said court dismissed the bill, with costs. That in the case of Anson Searls *vs.* Herrison Ballard *et al.* in the Circuit Court of the United States for the Eastern District of Michigan, the defendants prayed an appeal to reverse the decree against them; that the time to fix the amount of the appeal bond was extended, that the amount of such bond was fixed at $8,500.00; that such bond was given and approved by one of the judges of said court; that the transcript of the record was duly sent up and filed in this court.

Such case being No. 144 on the docket for the October Term 1888.

The statement of facts as I have given them I believe, will not be controverted by the counsel for the appellee, the said Anson Searls. The statement of facts show that the appellee (the complainant below) has lost all right he ever had to the relief prayed for in his bill.

If the decree in the original case had been reversed before the decree in this auxilliary case in the court below, that court would, upon the fact being brought to its notice, have allowed the answer to have been amended and upon proof according to the practice of the court, dismissed the bill. Upon the appeal being perfected, the court lost all control of the case, and it is now before this court to be disposed of according to equity and good conscience.

If the case is dismissed it leaves the decree of the court below ; that the title of the appellant Harrison H Ballard is fraudulent and void, in full force and effect. An injury and damage to him, but of no benefit to any one. If it is remanded to the court below with an order to proceed according to right and equity it is doubtful if that court could open the decree as the term at which it was entered has been finished and several others have passed

Therefore, it seems, that the only court that can order the bill dismissed and render justice to the defendant in the suit is this court. The costs should be given to the appellant in both courts, for the complainant when he filed his bill in aid of his execution, knew that the decree upon which it was founded was liable to be reversed, and that if such decree was reversed that his bill in aid of his execution would also fail. He was willing to take the chance, if the original suit was maintained then he might be benefited by the auxilliary suit, but if the original decree was reversed he would suffer no damage from the failure of the auxilliary suit. Having put the defendants to great cost to defend this case, when the chance of its success was in doubt, having lost the suit he should pay the costs.

CHARLES J. HUNT,

Solicitor and of Counsel.

ALFRED RUSSELL,

of Counsel.

Office Supreme Court U. S.
FILED

No. 144.

OCTOBER TERM, 1888.

THE SUPREME COURT OF THE UNITED STATES.

HARRISON H. BALLARD,
Appellant.

vs.

ANSON SEARLS.

BRIEF FOR APPELLANT.

May it please your Honors.

The record in this case has not been printed, because in the present condition of this case, we do not intend to ask this court to sit here, and hear an argument on the merits and then to decide whether certain conveyances are fraudulent and void as to creditors, when the claim of the creditor who files the bill to set aside the conveyances *has been utterly extinguished.*

The suit to which this case is auxilliary having been determined adversely to the complainant, his right to the relief asked for in his bill is absolutely destroyed. This is shown in the affidavit and papers attached to the motion to reverse the decree of the court below made in this cause. These facts are not disputed by the counsel for the appellee.

The theory of this bill to set aside a conveyance as fraudulent and void as to creditors, is that there is a cloud upon the title of the lands of the debtor, and that until it is removed the land cannot be sold under the execution and a clear title given.

This is for the benefit of the debtor as well as the creditor, and for the security of the purchaser.

Messmore v. Huggard.
46 Mich., 558. (563)

This bill by the laws of Michigan must be filed after the levy of the execution and determined before the sale of the lands. This is recognized by the complainant because he pursued this course. And necessarily the lands cannot be lawfully sold on the execution in the original cause until the determination of this auxilliary suit. In the case before the court, this auxilliary suit having been heard, and determined in the court below, against the defendants, the defendant Ballard, appealed to this court, and the case is yet pending here, and no sale can lawfully be made on the execution in aid of which the suit is brought until this court decrees the conveyances fraudulent as to creditors.

But how can they be adjudged fraudulent and void as to creditors when there is no creditor?

Barton v. Petit and Bayard 7 Cranch 288, answers the question.

The appellee in this cause having lost his right to the relief prayed for in his bill, cannot ask this court to determine a question in which he has no interest and for a judgment he cannot enforce.

County of Dakota v. Glidden, 113 U. S. 222.

Smith v. United States, 94 U. S. 97.

This court does not sit here to decide questions arising in cases which no longer exist in regard to rights which it cannot enforce.

Cheong Ah Moy v. Untited States, 113 U. S. 216 (218). County of San Mateo v. Southern Pacific R.R. Co. 116 U. S. 138 (141). Lord v. Veazie 8. How. 251 (255.)

The appellee's couusel admits the statement of facts in the motion papers to be true, but endeavors to avoid them by

setting up the rights of purchasers, under an execution sale. These purchasers, if there are any *bona fide* purchasers, are not parties to the appeal and cannot be heard.

Lord v. Veazie 8 How. 251 (255). Harrison v. Nixon 9 Pet. 483 (494).

The sale under which these purchasers claim, was made after the case was appealed to this court, and was just as unlawful as if made before the case was decided in the court below.

But the title to property sold under judicial process, is not warranted by the party obtaining the judgment of the court, *Waples v. United States*, 110 U. S. 630 (633), and therefore the appellee cannot claim that this court should take notice of their pretended rights, and determine in this suit a question in which the appellee is in no way concerned.

As the lands which were thus unlawfully sold under the execution are still in the possession of the appellant or those claiming under him, these pretended purchasers must resort to their action of ejectment to recover or obtain possession of them.

Smith v. McCann 24 How. 398 (405).

Therefore these purchasers would derive no benefit from a decision of this court on the merits of the case or a decision whether the conveyances to Ballard were fraudulent and void as to creditors, or not, because in the action of ejectment they must have *a valid and subsisting title* at the time the suit is brought. In this case the purchasers title depends upon the decree of the court below in the original case of Searls v. Worden, which has been reversed, and consequently they have nothing to stand upon.

Therefore as the foundation of their claim has failed it makes no difference to them whether the conveyance to Ballard was fraudulent and void as to creditors or not. Consequently, they have no right to ask this court to decide upon the merits of the case, even if they were rightfully here.

These pretended purchasers did not pay any money for their purchase, either at the time of sale or afterward. One of them assigned the marshal's certificate of sale, and his as-

signee obtained his deed, but has never put it on record. The other has not even asked for the marshal's deed.

(I think the counsel for the appellee will not deny the above.) This shows that they are not *bona fide* purchasers, that their interest was merely nominal and not real, and that some one who owns or thinks he owns the real interest is behind them. It shows that the counsel for the appellee is not appearing and claiming the protection of the court for these parties, but that he is using their names to protect the interests of others, upon whom the court would look with suspicion and distrust if they should openly appear.

If the motion heretofore made to reverse the decree of the court below, and dismiss the bill, should be granted, it would prevent several suits to remove the cloud upon the title to these lands caused by the said unlawful and unjust sale on execution, and other tedious and costly litigation growing out of such causes.

Therefore we submit, may it please your Honors, that it would be in accordance with justice and equity to grant the motion of the appellant to reverse the decree of the court below and dismiss the bill with the costs to the appellant.

CHARLES J. HUNT,
Of Counsel for Appellant.